

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 09-50026 (REG)

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6 In the Matter of:

7
8 MOTORS LIQUIDATION COMPANY, et al.

9 f/k/a General Motors Corporation, et al.,

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11 Debtors.

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15 United States Bankruptcy Court

16 One Bowling Green

17 New York, New York

18
19 December 15, 2010

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23 B E F O R E:

24 HON. ROBERT E. GERBER

25 U.S. BANKRUPTCY JUDGE

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2 HEARING re IUE-CWA's Motion Pursuant to 11 U.S.C. §§ 105 and
3 363(b) to Approve Assignment of Claim of IUE-CWA to a VEBA
4 Trust

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6 HEARING re Fourth Application of Weil, Gotshal & Manges LLP as
7 Attorneys for the Debtors, for Interim Allowance of
8 Compensation for Professional Services Rendered and
9 Reimbursement of Actual and Necessary Expenses Incurred from
10 June 1, 2010 through September 30, 2010

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12 HEARING re Second Interim Application of Stutzman, Bromberg,
13 Esserman & Plifka, A Professional Corporation, for Allowance of
14 Interim Compensation and Reimbursement of Expenses Incurred as
15 Counsel for Dean M. Trafelet in his Capacity as Legal
16 Representative for Future Asbestos Personal Injury Claimants
17 for the Period from June 1, 2010 through September 30, 2010

18
19 HEARING re Second Interim Application of Dean M. Trafelet in
20 His Capacity as Legal Representative for Future Asbestos
21 Personal Injury Claimants, for Allowance of Interim
22 Compensation and Reimbursement of Expenses Incurred for the
23 Period from June 1, 2010 through September 30, 2010
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2 HEARING re Second Interim Application of Analysis Research
3 Planning Corporation as Asbestos Claims Valuation Consultant to
4 Dean M. Trafelet in his Capacity as Legal Representative for
5 Future Asbestos Personal Injury Claimants for Allowance of
6 Interim Compensation and Reimbursement of Expenses Incurred for
7 the Period from June 1, 2010 through September 30, 2010
8

9 HEARING re Second Interim Application of Bates White, LLC, as
10 Asbestos Liability Consultant to the Official Committee of
11 Unsecured Creditors, for Allowance of Compensation for
12 Professional Services Rendered and for Reimbursement of Actual
13 and Necessary Expenses Incurred for the Period from June 1,
14 2010 through September 30, 2010
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16 HEARING re Fourth Application of Butzel Long, a Professional
17 Corporation, as Special Counsel to the Official Committee of
18 Unsecured Creditors of Motors Liquidation Company, f/k/a
19 General Motors Corporation, for Interim Allowance of
20 Compensation for Professional Services Rendered and
21 Reimbursement of Actual and Necessary Expenses Incurred from
22 June 1, 2010 through September 30, 2010
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HEARING re Second Interim Fee Application of Deloitte Tax LLP
as Tax Services Providers for the Period from June 1, 2010
through September 30, 2010

HEARING re Fourth Interim Application of FTI Consulting, Inc.
for Allowance of Compensation and for Reimbursement of Expenses
Rendered in the Case for the Period June 1, 2010 through
September 30, 2010

HEARING re Second Application of Hamilton, Rabinovitz, &
Associates, Inc. as Consultants for the Debtors with Respect to
Present and Future Asbestos Claims, for Interim Allowance of
Compensation for Professional Services Rendered and
Reimbursement of Actual and Necessary Expenses Incurred from
June 1, 2010 through September 30, 2010

HEARING re Fourth Interim Fee Application of Jenner & Block LLP
for Allowance of Compensation for Services Rendered and
Reimbursement of Expenses

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2 HEARING re Interim Compensation and Reimbursement of Expenses
3 with Respect to Services Rendered as Consultant on the
4 Valuation of Asbestos Liabilities to the Official Committee of
5 Unsecured Creditors Holdings Asbestos-Related Claims for the
6 Period June 1, 2010 through September 30, 2010
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8 HEARING re Third Application of Plante & Moran, PLLC, as
9 Accountants for the Debtors, for Interim Allowance of
10 Compensation for Professional Services Rendered and
11 Reimbursement of Actual and Necessary Expenses Incurred from
12 June 1, 2010 through September 30, 2010
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14 HEARING re Fourth Interim Application of The Claro Group, LLC
15 for Allowance of Compensation and Reimbursement of Expenses for
16 the Period June 1, 2010 - September 30, 2010
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18 HEARING re Second Application of Togut, Segal & Segal LLP as
19 Conflicts Counsel for the Debtors for Allowance of Interim
20 Compensation for Services Rendered for the Period June 1, 2010
21 through September 30, 2010, and for Reimbursement of Expenses
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2 HEARING re Second Consolidated Application of Brady C.
3 Williamson, Fee Examiner, and Godfrey & Kahn, S.C., Counsel to
4 the Fee Examiner, for Interim Allowance of Compensation for
5 Professional Services Rendered from June 1, 2010 through
6 September 30, 2010 and Reimbursement of Actual and Necessary
7 Expenses Incurred from September 1, 2010 through October 31,
8 2010

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10 HEARING re Second Application of Stuart Maue for Allowance of
11 Compensation and Reimbursement of Expenses for the Analysis of
12 Interim Fee Applications of Selected Case Professionals

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14 HEARING re Pre-Trial Conference Regarding Official Committee of
15 Unsecured Creditors' Objection to Claims filed by Green Hunt
16 Wedlake, Inc. and Noteholders of General Motors Nova Scotia
17 Finance Company and Motion for Other Relief

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19 HEARING re Second Interim Quarterly Application of Caplin &
20 Drysdale, Chartered for Interim Compensation and Reimbursement
21 of Expenses with Respect to Services Rendered as Counsel to the
22 Official Committee of Unsecured Creditors Holdings
23 Asbestos-Related Claims for the Period June 1, 2010 through
24 September 30, 2010
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HEARING re Third Interim Application of LFR Inc. for Allowance
of Compensation and for Reimbursement of Expenses for Services
Rendered in the Case for the Period February 1, 2010 through
May 30, 2010

HEARING re Fourth Interim Application of LFR Inc. for Allowance
of Compensation and for Reimbursement of Expenses for Services
Rendered in the Case for the Period June 1, 2010 through
September 30, 2010

Transcribed by: Lisa Bar-Leib

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A P P E A R A N C E S :

WEIL GOTSHAL & MANGES LLP

Attorneys for the Debtors and Debtors-in-Possession

767 Fifth Avenue

New York, NY 10153

BY: STEPHEN KAROTKIN, ESQ.

KING & SPALDING LLP

Attorneys for New GM

1185 Avenue of the Americas

New York, NY 10036

BY: ARTHUR J. STEINBERG, ESQ.

SCOTT DAVIDSON, ESQ.

U.S. DEPARTMENT OF JUSTICE

Office of the United States Trustee

33 Whitehall Street

21st Floor

New York, NY 10004

BY: BRIAN MASUMOTO, ESQ.

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for Claimant Green Hunt Wedlake, Inc. as

Trustee of General Motors Nova Scotia Finance Company

One Bryant Park

New York, NY 10036

BY: SEAN E. O'DONNELL, ESQ.

DEAN CHAPMAN, ESQ. (TELEPHONICALLY)

BROWN RUDNICK LLP

Attorneys for Certain Noteholders of General Motors Nova

Scotia Finance Company

Seven Times Square

New York, NY 10036

BY: DANIEL J. SAVAL, ESQ.

1
2 BROWN RUDNICK LLP

3 Attorneys for Certain Noteholders of General Motors Nova

4 Scotia Finance Company

5 One Financial Center

6 Boston, MA 02111

7
8 BY: CALEB B. PIRON, ESQ.

9 (TELEPHONICALLY)

10
11 BUTZEL LONG P.C.

12 Attorneys for the Official Committee of Unsecured

13 Creditors

14 380 Madison Avenue

15 22nd Floor

16 New York, NY 10017

17
18 BY: ERIC B. FISHER, ESQ.

CAPLIN & DRYSDALE, CHARTERED

Attorneys for Official Committee of Unsecured Creditors

Holding Asbestos-Related Claims

One Thomas Circle, NW

Suite 1100

Washington, DC 20005

BY: RONALD E. REINSEL, ESQ.

DICONZA LAW, P.C.

Attorneys for LFR, Inc.

880 Third Avenue

New York, NY 10017

BY: GERARD DICONZA, ESQ.

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25

GODFREY & KAHN S.C.

Attorneys for the Fee Examiner, Brady C. Williamson
One East Main Street
Suite 500
Madison, WI 53701

BY: KATHERINE STADLER, ESQ.

BRADY C. WILLIAMSON, ESQ. (TELEPHONICALLY)
MONICA SANTA MARIA, ESQ. (TELEPHONICALLY)
ERIC J. WILSON, ESQ. (TELEPHONICALLY)

GODFREY & KAHN S.C.

Attorneys for the Fee Examiner, Brady C. Williamson
333 Main Street
Suite 600
Green Bay, WI 54307

BY: CARLA O. ANDRES, ESQ.
(TELEPHONICALLY)

1
2 GREENBERG TRAURIG, LLP

3 Attorneys for Certain Noteholders of General Motors Nova

4 Scotia Finance Company

5 MetLife Building

6 200 Park Avenue

7 New York, NY 10166

8
9 BY: BRUCE R. ZIRINSKY

10 JOHN H. BAE, ESQ.

11
12 KENNEDY, JENNIK & MURRAY, P.C.

13 Attorneys for IUE-CWA

14 113 University Place

15 New York, NY 10003

16
17 BY: SUSAN M. JENNIK, ESQ.

18
19 LOEB & LOEB LLP

20 Attorneys for Deloitte Tax LLP

21 345 Park Avenue

22 New York, NY 10154

23
24 BY: DANIEL B. BESHKOF, ESQ.

1
2 MORRISON & FOERSTER LLP

3 Attorneys for Citigroup Global Markets, Inc.

4 1290 Avenue of the Americas

5 New York, NY 10104

6
7 BY: JORDAN WISHNEW, ESQ.

8
9 RICHARDS KIBBE & ORBE LLP

10 Attorneys for Morgan Stanley International plc

11 One World Financial Center

12 New York, NY 10281

13
14 BY: NEIL S. BINDER, ESQ.

15
16 STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, P.C.

17 Attorneys for Dean M. Trafelet

18 2323 Bryan Street

19 Suite 2200

20 Dallas, TX 75201

21
22 BY: HEATHER PANKO, ESQ.

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Have seats, please. All right. General
4 Motors -- Motors Liquidation. Mr. Karotkin, I'll hear your
5 recommendations as to the order in which we should proceed. I
6 gather that the IUE's motion is wholly unopposed. Should we
7 get that out of the way?

8 MR. KAROTKIN: I was going to suggest that first.
9 Sure.

10 THE COURT: All right.

11 (Pause)

12 MS. JENNIK: Thank you, Your Honor. Susan Jennik for
13 IUE-CWA. As you know, the IUE-CWA has a claim in this matter
14 because of the settlement agreement with General Motors. The
15 settlement agreement requires any assignment of the claim be
16 approved by the Court.

17 THE COURT: Can I interrupt you, Ms. Jennik? Because
18 I saw the motions, I saw the papers. And most importantly, I
19 saw that it was wholly unopposed and was wholly innocuous. Any
20 reason why I shouldn't grant it without any further comment?

21 MS. JENNIK: I have an amended version of the order,
22 Your Honor, which makes some corrections. And I'd like to
23 offer that up. I've given it to the committee counsel and also
24 the U.S. trustee and the counsel for the debtors.

25 THE COURT: Okay.

1 MS. JENNIK: And there's been no objection from them.
2 If I may approach?

3 THE COURT: Yes.

4 MS. JENNIK: What you have there is a redline version
5 and also the amended order in a clean copy.

6 THE COURT: Sure. It's granted. It'll be entered as
7 soon as I get this --

8 MS. JENNIK: Thank you, Your Honor.

9 THE COURT: -- courtroom support to get it typed.

10 (Pause)

11 MR. KAROTKIN: Your Honor, the other -- I think the
12 only other -- there are two subject matters on the calendar.
13 One is fee applications and the other is the dispute related to
14 the Nova Scotia claims. I think -- and counsel for the fee
15 examiner is here. I think that all but two of the fee
16 applications have been resolved.

17 THE COURT: Those being Caplin & Drysdale and LFR?

18 MR. KAROTKIN: Yes, sir. So my suggestion, again,
19 subject to whatever you'd like to do, is that you address those
20 first.

21 THE COURT: All right. We'll do that but everybody
22 stay seated. Folks, I'm concerned that the costs of the fee
23 examiner process are excessively cutting into the very savings
24 that the fee examiner process is supposed to accomplish. And I
25 don't want to make that situation which, frankly, is getting me

1 increasingly annoyed, even worse by lengthy argument today.

2 I'm also concerned that the factor that most affects
3 the legal fees and other professional expenses in this case
4 isn't the vague time descriptions or even contentions that two
5 senior lawyers are doing things, but the intercreditor
6 disputes, most significantly, the battling between the
7 creditors' committee and the asbestos claims creditors'
8 committee. And I think that those who've spoken in writing and
9 in panels about their efforts to keep these down in large 11s
10 are kidding themselves and the public when they don't realize
11 that the thing that most affects the cost of running a large 11
12 isn't the things that the examiner and the professionals on
13 this motion and in the last three applications we've had have
14 been fighting about but this intercreditor jousting.

15 Now, I can and will do the bandaid types of measures
16 that the Code requires me to do as part of my responsibility.
17 But I need to tell you all that I want to keep our eye on the
18 ball in this case. And I want to bring this case to an end.
19 And I don't think we should be self-congratulatory, on the one
20 hand, or spending all of this time, on the other, vis-à-vis the
21 issues that we have on this fee application dispute today
22 because until and unless we stop the intercreditor bickering,
23 we're never going to get this case done and we're never going
24 to keep the case expenses reasonably under control.

25 Now, with that said, I have a number of tentative

1 rulings based upon my review of the papers, all of which I have
2 read, and I will hear very brief legal argument directed at
3 telling me why, after reading the briefs I am wrong.

4 One, the Caplin & Drysdale younger partners, for the
5 most part, the same price as the Weil and Kramer Levin
6 associates. I find nothing troublesome about people who are
7 called young partners or partners doing work when the
8 associates who would be posted at other firms for doing that
9 same work are charging what is, in substance, the same amount.
10 The showing -- except for Inselbuch and Lockwood -- the Caplin
11 & Drysdale lawyers are at the cheap end of what I've seen. And
12 the showing that other firms' associates are billed at rates
13 comparable to the young partners or the younger partners at
14 Caplin & Drysdale makes me unpersuaded that I'm going to make a
15 big deal of that issue.

16 Next. There are enough deficiencies in each of the
17 positions of Caplin & Drysdale and the fee examiner's so that
18 neither side substantially prevailed in the back and forth and
19 the disputes. I don't need a conference call. The cost of
20 Caplin & Drysdale's responding to a fee examiner criticism will
21 not be compensable. Obviously, many of the fee examiner
22 positions were likewise not accepted by me but that isn't the
23 test.

24 The objections based on vague descriptions even if
25 made vague for tactical reasons or for confidentiality reasons

1 are sustained. You'll have to figure out what the dollar
2 consequence of that is. There are ways to skin the cat by
3 means of description more specific than saying "Reading a
4 pleading to determine whether our committee's interests are
5 affected".

6 And when a task that's in the middle of a list of
7 many tasks separately stated to avoid the anti-bunching rules
8 is a tact as being beneath the level of sophistication of the
9 remainder of the lawyer, I think that's so de minimis and so
10 inefficient to critique and punish the lawyer for doing
11 something when it's a flow of work matter that I'm not going to
12 penalize the lawyer for being so accurate in his or her
13 description or for allowing a seemingly menial task to be mixed
14 as part of a larger flow.

15 With that said, what else do we have on Caplin &
16 Drysdale?

17 MS. STADLER: Good afternoon, Judge. Katherine --

18 THE COURT: Ms. Stadler?

19 MS. STADLER: Katherine Stadler, yes, for the fee
20 examiner of Godfrey & Kahn. Nothing really left on Caplin &
21 Drysdale, Judge. I don't quarrel at all with any of your
22 conclusions. I did want to just clarify one thing for the
23 record. The issue with the task allocation wasn't whether it
24 should be done by partners or associates. The issue was
25 whether they were more in the nature of clerical tasks that

1 were inappropriate to bill attorneys for at all, such as docket
2 monitoring, et cetera.

3 THE COURT: Well, were there ever any instances of an
4 attorney charging for using the xerox machine or something of
5 that sort?

6 MS. STADLER: Not indicated on the time detail, no.
7 It would be check PACER, create to do lists, that sort of
8 thing.

9 THE COURT: I'm not persuaded by that distinction,
10 Ms. Stadler.

11 MS. STADLER: That's the only point on Caplin that I
12 have remaining after your tentatives, Judge.

13 THE COURT: All right. Anybody from Caplin &
14 Drysdale want to be heard given what I already said? Mr.
15 Reinsel?

16 MR. REINSEL: Thank you, Your Honor. Robert Reinsel
17 for Caplin & Drysdale. Just want to briefly respond to two
18 points you raised, Judge. With respect to the -- I want to
19 come back to your fee order and whether or not fees would be
20 compensable for responding to the fee examiner based upon your
21 earlier ruling that the parties substantially prevailing ought
22 to be able to be compensated for that.

23 The first objection that we responded to, Your Honor,
24 that's involved here, although the fee examiner didn't quantify
25 a number or quantify their objection, they do acknowledge that

1 that went to significantly all of our fees or a significant
2 portion of all of the fees in our first fee application which
3 were in excess of 400,000 dollars. What we did was work with
4 the examiner, spent a great deal of time responding and,
5 ultimately, ended up compromising without admitting that
6 anything was wrong only about 13,000 dollars out of a 400,000
7 fee application with Your Honor. Respectfully, Your Honor, I
8 would say that we did substantially prevail on that.

9 THE COURT: Respectfully, Mr. Reinsel, aside from the
10 fact that I thought I made my thinking clear, I don't think
11 that pleading nolo contendere is a satisfactory way to get a
12 "Get out of jail free" card on this issue. The fact is that I
13 got problems with both sides' positions and I don't find that
14 the Caplin & Drysdale side of the feuding was sufficiently
15 persuasive that I can find that you substantially prevailed.
16 Under those circumstances, as I stated in my last opinion, the
17 one that I had to publish, we go by the American rule and you
18 got to eat it.

19 MR. REINSEL: I understand your ruling, Your Honor.

20 THE COURT: Okay.

21 MR. REINSEL: The second part, Your Honor, dealing
22 with the fee examiner's assertion of vagueness in certain
23 billing entries, as you say, there are a number of ways to
24 slice that cat up when we come down to it. One of our problems
25 in responding both to the fee examiner's present objection and

1 to others is the lack of specificity in what they were
2 asserting was wrong with the particular billing entries. What
3 they did was simply attach all of the billing run for one of
4 our attorneys and say take ten percent off of his entire cut
5 when the objection that they specifically framed, our vague
6 reference to review, analyze pleadings for impact on the
7 committee, really only accounted for six hours out of over 200
8 hours of his effort. Now, if what the Court is saying is work
9 with the fee examiner to see if we can't refine that number,
10 our problem is with their just overall reach and making a
11 generalized take ten percent off the top.

12 THE COURT: My ruling is that you identify the issues
13 that were subject to the -- or the time entries that were
14 subject to that affliction and those are disallowed. And if
15 that's less than the ten percent then you win. And if that's
16 more than ten percent then Mr. Williamson wins.

17 MR. REINSEL: Understand, Your Honor. Thank you very
18 much.

19 THE COURT: Okay. LFR. Now, is Mr. DiConza here?
20 Come on up, please.

21 Folks, it's been the law in this district since long
22 before I was a judge, much more than ten years ago, probably
23 twenty or twenty-five, that the test for determining whether or
24 not a person or entity is a professional is governed by two
25 things. One, the degree of control over the Chapter 11 case;

1 and, two, the extent to which those services would be provided
2 in the absence of bankruptcy. If anybody believes that I'm
3 applying the wrong standard, he or she can correct me.

4 Under that standard, it seems to me that I don't have
5 a need for a retention of an environmental consultant who would
6 have to clean up the mess whether or not GM -- or Motors
7 Liquidation was in Chapter 11. And Mr. DiConza has pointed out
8 that I already ruled on this issue in one of our earlier
9 sessions on fees. Ms. Stadler, to what extent am I mistaken in
10 either of those understandings? Mr. DiConza, make room for
11 her, please.

12 MS. STADLER: Thank you, Judge. I don't think you're
13 mistaken in either of those. I would note that there are
14 numerous environmental consultants in the case that are
15 retained subject to Section 327 of the Bankruptcy Code.
16 Arguably, your analysis would apply to any of them. With
17 respect to the first part of your inquiry, I wouldn't have any
18 corrections to make.

19 THE COURT: All right. Mr. DiConza, do you want to
20 be heard?

21 MR. DICONZA: Well, Your Honor, we did file
22 responsive papers several days ago and basically we argued that
23 under the Seatrain decisions and cases that have followed it
24 that TEA is not a professional within the meaning of the
25 Bankruptcy Code. What was troubling is that the fee examiner

1 sought disallowance of a hundred percent of my client's
2 requested reimbursements with -- in connection with TEA under
3 the third and then an arbitrary fifty percent under the fourth
4 interim application. We believe that the invoices submitted in
5 connection with the TEA expenses do contain sufficient detail.
6 And obviously -- we were on a conference earlier today with the
7 fee examiner and were able to resolve all the other issues with
8 the third and fourth interim fee applications. If the fee
9 examiner has any particular issue with any of the time entries
10 submitted by TEA, my client would be more than happy to work
11 with the fee examiner and obtain additional information. The
12 problem we had with TEA was that the fee examiner took a
13 hardline position and said, look, they are a professional, they
14 should have been retained and, therefore, we're going to seek
15 disallowance of all of their expenses under the third and fifty
16 percent under the fourth.

17 THE COURT: All right. Well, my ruling on the
18 TEA/LFR issue is as follows:

19 I am adhering to my stated articulation of what the
20 law is and when a party is a professional and when it isn't.
21 However, when an entity is used as a subcontractor for a
22 professional, retained professional, having opened the door by
23 getting oneself retained, the LFR estate -- or entity, excuse
24 me, as you properly anticipated, Mr. DiConza, must take the
25 heat or make any adjustments if any of the underlying time

1 turns out to have been unreasonable. So the overall objection
2 that TEA was not retained is overruled. However, the -- to the
3 extent that there were any instances of inappropriate billing
4 by TEA, TEA and/or LFR is going to have to eat those. And you
5 can work out your specifics with the fee examiner staff to make
6 that happen. Your deals with the fee examiner staff, I don't
7 need to hear in detail. If they're consensual between the two
8 of you, they'll be ratified and confirmed.

9 MR. DICONZA: Yes, Your Honor. Thank you.

10 THE COURT: All right. Am I correct that we have no
11 further fee issues? All right. I'm just going to say one
12 other thing.

13 As I indicated at the outset of my remarks, in my
14 view, the kinds of things that we dealt with today and the
15 kinds of things that were consensually resolved before I had to
16 deal with them today are miniscule in importance compared to
17 the major, major costs that the estate is incurring both in
18 terms of running meters and delay in getting distributions to
19 creditors occasioned by the intercreditor disputes. I want you
20 to redouble your efforts to resolve those issues and/or if you
21 have to agree to disagree, to minimize the number of people and
22 meters running to address those concerns.

23 All right. Now, we'll turn to the one issue which
24 also has, of course, intercreditor dispute trappings but which
25 raises very serious issues which is the Nova Scotia matter. As

1 I understand it, we have just a status conference today. Mr.
2 Fisher?

3 MR. FISHER: That's correct, Your Honor.

4 THE COURT: Come on up, please.

5 MR. FISHER: Good afternoon, Your Honor. Eric Fisher
6 from Butzel Long for the creditors' committee. I think, Your
7 Honor, that the only issue for the Court's consideration today
8 is the question of how the creditors' committee's objection
9 that's at issue which is an objection that arises out of Old
10 GM's guaranty of approximately a billion dollars face amount of
11 bonds issued by a subsidiary, GM Nova Scotia Finance. The only
12 question is how that objection ought to be litigated. And just
13 to cut right to the chase to the area of disagreement that we
14 have with noteholders' counsel, with trustee's counsel and, I
15 think, with New GM's counsel as well, it's the creditors'
16 committee's position that this objection raises complicated
17 factual issues. Discovery is necessary. And discovery will
18 ultimately contribute to the most efficient resolution of the
19 case even if that means that it needs to go the distance and be
20 heard at an evidentiary hearing before your Court -- before
21 Your Honor.

22 And it's the position of the claimants here that
23 early summary judgment is called for. No discovery is
24 necessary. And our view is that this early summary judgment
25 type approach will actually impede, as opposed to expedite, the

1 progress of the case because given how complicated it is
2 factually, I think, Your Honor, that it's a virtual certainty
3 that if there's no discovery that's permitted and then we're
4 faced with early summary judgment motions, we will be opposing
5 the summary judgment motions at least in part on Rule 56(f)
6 grounds and tell Your Honor that we need discovery.

7 And so, we think it's important for the Court to put
8 in place a reasonable discovery schedule, to schedule an
9 evidentiary hearing down the road. And certainly, we're open
10 to dispositive briefing in advance of that evidentiary hearing
11 as long as there is a reasonable period of discovery that
12 precedes that dispositive briefing.

13 If Your Honor will permit, I wanted to take just a
14 few minutes, since this is our first appearance before Your
15 Honor with respect to this objection, to just sketch out the
16 procedural history behind the objection, give Your Honor in
17 very broad brushstrokes just a sense of what our objection is
18 all about, and then describe what we think the proposed scope
19 of discovery and what a reasonable discovery schedule would
20 look like.

21 THE COURT: Yes, but in a nonargumentative way
22 because I don't want an argument, mini or otherwise, on the
23 merits of this controversy today.

24 MR. FISHER: I will try to give Your Honor just the
25 facts. We first filed the objection on July 2010. And when we

1 filed the objection, we secured from chambers an evidentiary
2 hearing date in November. And soon after --

3 THE COURT: My chambers gave you an evidentiary
4 hearing date for -- on the filing of an objection?

5 MR. FISHER: Yes, Your Honor. We called chambers and
6 reque -- we indicated that we thought the objection was
7 appropriate for an evidentiary hearing --

8 THE COURT: Well, it isn't that it's not appropriate
9 for an evidentiary hearing. The problem is that an evidentiary
10 hearing on a matter of this character is one that isn't like a
11 new value preference hearing that you resolve in an hour and a
12 half.

13 MR. FISHER: Right. Your Honor, as a practical
14 matter, I think that date served as nothing more than a
15 placeholder at this point. But what we did was within a few
16 weeks of serving -- of filing and serving our objection, we
17 served discovery requests on the GM Nova Scotia Finance
18 bondholders' counsel at Greenberg Traurig and we also served
19 interrogatories. The response that we got was we don't think
20 discovery is appropriate here. We don't think any discovery
21 should go forward. Let's have a meeting. We had a meeting
22 with bondholders' counsel at Greenberg in September 2010. At
23 the time, Greenberg Traurig was representing the bondholders
24 and, I believe, also representing the GM Nova Scotia Finance
25 trustee.

1 For the time being, at that meeting, we agreed to
2 disagree about whether or not there would be discovery or what
3 the scope would be or whether we would agree to litigate
4 threshold issues before proceeding with discovery. We
5 continued to talk. And then in November 2010, still no
6 response to our discovery because we had a disagreement with
7 them about whether there would be any discovery. We had
8 another meeting. That meeting was attended by Akin Gump who
9 had now come on as counsel for the GM Nova Scotia Finance
10 trustee. And it was attended by the New GM. And following
11 that meeting, the creditors' committee filed an amended
12 objection which is the operative objection before Your Honor.
13 That was filed on November 19, 2010. And then pursuant to an
14 agreed schedule, because the noteholders and the other
15 claimants here wanted to be able to put in a response before
16 Your Honor had an initial pretrial conference in the case, they
17 did so just this past Monday, December 13th.

18 There were three substantive responses filed. It's
19 more than 110 pages of response. And there were a number of
20 joinders that were filed as well.

21 Procedurally, that's where we are. A brief overview
22 of the objection. The claims that we're challenging arise out
23 of something called a lockup agreement. The lockup agreement
24 was entered into hours and maybe minutes before GM filed its
25 bankruptcy petition on June 1, 2009. And the consequences of

1 the lockup agreement are that the GM Nova Scotia Finance
2 bondholders received a consent fee, a cash consent fee, of 369
3 million dollars which is thirty-six percent of the face amount
4 of their bonds. They have asserted 2.67 billion dollars worth
5 of claims in the Old GM bankruptcy proceedings. And you get to
6 that number by adding the GM Nova Scotia Finance trustee's
7 claim and the guaranty claim that's been asserted by the
8 bondholders. 600 million dollars of that 2.6 billion dollars
9 worth of claims relates to a swap that, in the first instance,
10 was an obligation that GM Nova Scotia Finance owed to Old GM.
11 And through a series of provisions in the lockup agreement that
12 I know Your Honor doesn't want to hear about now, that became a
13 claim against the Old GM estate.

14 And so, it's this whole ball of wax that we are
15 taking aim at with our objection. And all of these claims, at
16 the end of the day, are based upon 1.07 billion dollars worth
17 of notes that were guaranties by Old GM and that we argue in
18 our objection ought to, in the first instance, be reduced by
19 the 369 million dollar consent fee that was paid because we say
20 it wasn't really a consent fee. It was a payment against the
21 principal amount of the notes.

22 I won't take Your Honor through the various legal
23 theories that we have in our objection. But --

24 THE COURT: I've read the objection.

25 MR. FISHER: -- those are the facts that are

1 essential to our objection.

2 As I said at the outset, we need discovery. It's
3 been our position from the very beginning that we need
4 discovery. That's why we served discovery requests in August.

5 I think that part of the arrangements behind the
6 lockup agreement and the choreography that followed the lockup
7 agreement was to try to have the agreement escape this Court's
8 scrutiny. And we want to make sure that we have a full and
9 fair opportunity to kick the tires and to test the legitimacy
10 of these claims. And so, I think what we envision is document
11 discovery from the parties to the lockup agreement. We
12 envision taking between ten and fifteen depositions. And then
13 it's possible that this objection would require expert
14 testimony on the question of whether this consent fee, the 369
15 million dollar fee was reasonable.

16 What we've proposed to the other side was that we
17 ought to devote five months to all of that discovery, that's
18 the paper discovery, the deposition discovery and, potentially,
19 the expert discovery. Based on the Court's calendar, it should
20 be scheduled for an evidentiary hearing for sometime
21 thereafter. And we would be happy to work with all the other
22 parties to come up with an agreed to pre-hearing briefing
23 schedule so that as many issues that can be vetted as a matter
24 of law in advance of the hearing are vetted.

25 In a nutshell, that's our position, Your Honor.

1 THE COURT: All right. Mr. Zirinsky, are you
2 speaking for some of the noteholders or all of them?

3 MR. ZIRINSKY: I'm speaking for four noteholders that
4 I represent, Your Honor.

5 THE COURT: All right. Come on up.

6 MR. ZIRINSKY: For the record, Bruce Zirinsky,
7 Greenberg Traurig on behalf of Appaloosa, Aurelius, Fortress
8 and Elliott. Your Honor, mindful of your point that we're not
9 here today to argue the merits, I'm not going to argue the
10 merits.

11 THE COURT: All right. I'll tell you the same thing
12 that I told Mr. Fisher. I read your response and Philip
13 Dublin's response and the New GM response although somebody can
14 help me understand its standing a little bit better along with
15 the creditors' committee's response.

16 MR. ZIRINSKY: Thank you, Your Honor. Just to put
17 things into context, Your Honor. The objection obviously seeks
18 to disallow and/or reduce or and/or equitably subordinate the
19 claims filed by the noteholders on their guaranty against GM.
20 GM is the guarantor of the bonds. It also seeks similar relief
21 with respect to a claim filed by the bankruptcy trustee of GM
22 Nova Scotia which is a claim based upon the Companies Act of
23 Nova Scotia. Nova Scotia is what's called an unlimited
24 liability company. GM -- Old GM is the sole member and, under
25 Canadian law, Old GM is responsible for payment of any

1 deficiency claim upon the winding up of the unlimited liability
2 company. So those are the two claims.

3 I'm not going to go into all of the background and
4 transactions. Suffice it to say that there were arm's length
5 negotiations held between the bondholders, represented by me,
6 and GM shortly before GM filed for bankruptcy. The terms of
7 that agreement were set forth in what's described as a lockup
8 agreement. There was a public disclosure through an SEC filing
9 by GM on June 1st through an 8(k) in which the entire
10 transaction or the agreement was disclosed. It was the subject
11 of a consent solicitation process which occurred, I believe,
12 sometime in either late June or early July of 2009. The --
13 part of the arrangement was a release of intercompany claims
14 held by GM Nova Scotia of about a billion three hundred million
15 or a billion four hundred million dollars depending upon the
16 exchange rate of Canadian versus U.S. dollar. So GM Canada
17 received a release of that intercompany claim in exchange for
18 the payment of the consent fee.

19 As a consequence of that, GM Canada was able to avoid
20 the necessity for seeking bankruptcy or similar relief under
21 Canadian law. And as the Court is well aware, GM Canada, a
22 wholly owned subsidiary of Old GM was part of the assets
23 acquired by New GM under the purchase agreement which Your
24 Honor approved back in July of 2009 as part of the overall GM
25 restructuring sale transaction.

1 The objection ignores or tends to overlook or try to
2 overlook two or three very important elements. First of all,
3 these transactions were fully known and were public and were
4 disclosed at the time of the sale held before Your Honor. At
5 the time of the sale and included in the sale of assets to New
6 GM were any claims against GM Canada, including any avoidance
7 actions which were acquired by New GM under the sale order.

8 In addition, under the sale order, as I mentioned,
9 the stock of GM Canada was sold to New GM. And in addition,
10 New GM assumed -- the lockup agreement was assumed and assigned
11 by Old GM to New GM under Section 365. It was an assumed
12 agreement.

13 Now, without getting into an argument today as to
14 what all of that means, as we set forth in our papers, we
15 believe that even if you accept the factual allegations of the
16 committee on their face, which obviously we don't, and their
17 attempt to characterize the transactions as something
18 inappropriate, which again they weren't, the fact is that we
19 believe, as a matter of law, all of these claims can be
20 disposed of by the Court by way of summary judgment. At the
21 very least, we believe that a motion for summary judgment would
22 enable the Court to determine to what extent, if any, there
23 were any genuine tryable issues of fact which might be the
24 basis for discovery.

25 The committee has suggested and they've given us a

1 working list of fifteen potential deponents, including the U.S.
2 Treasury Department and the Export Development Canada, two
3 governmental agencies which were, if not involved, were aware
4 of these transactions at the time they were being negotiated.
5 My point -- and they're proposing a five month discovery
6 schedule at which time will then first determine how to proceed
7 before Your Honor with a hearing.

8 Our clients are owed substantial amounts of money.
9 The debtors' plan, which is -- Your Honor just recently, I
10 believe, approved the disclosure statement -- treats these
11 claims as disputed claims. And as a consequence, no
12 distributions can be made on these claims if that's the way the
13 plan ultimately gets confirmed. No distributions can be made
14 on these claims unless and until Your Honor has resolved the
15 objections. We believe that's, obviously, unfavorable to all
16 of the bondholders who will not receive any distributions if
17 that remains the state of play. Moreover, the type of schedule
18 that the committee is proposing, five months of discovery and
19 then we'll decide how to try the case, means, for all intents
20 and purposes -- and I'm mindful of one of Your Honor's remarks
21 earlier in connection with the fee hearing or the fee
22 applications -- that this will delay distributions to
23 creditors. We don't think that's fair. We think this matter
24 should be adjudicated as promptly as possible and --

25 THE COURT: Well, you're not suggesting it's going to

1 delay distributions to all creditors. It's just going to delay
2 distributions to those creditors who are parties to this
3 transaction.

4 MR. ZIRINSKY: It will delay distributions to all
5 bondholders of these -- all holders of these notes. And there
6 are many holders of these notes beyond the four entities that I
7 represent. So none of those parties will receive a
8 distribution on these notes or on the guaranty claim under
9 these notes as long as the objection is outstanding unless the
10 Court were to make some ruling to the contrary allowing some
11 form of distribution.

12 So we believe it's important that these matters get
13 resolved expeditiously. We are mindful that Your Honor has a
14 rule that you must, in effect, approve any motion for summary
15 judgment --

16 THE COURT: Not just me. The entire Southern
17 District of New York.

18 MR. ZIRINSKY: Well, which also applies to Your
19 Honor. We are mindful of the rule. And we obviously were
20 tempted to ask Your Honor to permit us to file summary judgment
21 some time ago. But we also determined that given the efforts
22 to try to work this out with the committee's counsel to see if
23 there was a way to avoid a dispute about this and to see if we
24 could proceed on some form of summary judgment basis, on an
25 expedited basis, which unfortunately did not work out. We were

1 unable to reach agreement on that, we decided to file our
2 responses.

3 New GM is represented here by Mr. Steinberg. He can
4 speak to any questions you have for them. But in terms of
5 their standing, I think that -- remember that the committee is
6 not only objecting to the claims, but the committee has filed a
7 motion or has included within their objection, a request for
8 relief under Federal Rule 60(b) to set aside the sale order or
9 to modify the sale order. Obviously that would have rather
10 substantial consequences to New GM as well as potentially to
11 the entire Chapter 11 case, but I'll let Mr. Steinberg speak as
12 to the potential consequences for New GM. So there, I think
13 they are potentially affected by what happens here.

14 And we also believe that the committee has failed
15 utterly to set forth any basis -- legitimate basis -- for that
16 kind of relief. And given the fact that the entire predicate
17 of their claim is that somehow or another the consent fee was
18 somehow a fraudulent transfer or otherwise an avoidable
19 transfer, and that claim has been assigned -- any avoidance
20 claim has been assigned to New GM, it doesn't belong to the
21 estate. The claim was given up.

22 So just as a matter of law, we don't see how that can
23 be pursued, unless the committee is serious about trying to ask
24 Your Honor to, in effect, set aside Your Honor's order of 2009,
25 which approved the sale to GM -- to New GM, and modify the sale

1 order, which we don't think is warranted. We don't think
2 there's any basis for it. And again, we think that's something
3 that should be disposed of by the Court up front. In
4 connection with a motion for summary judgment, we would also
5 seek a ruling from Your Honor as to the 60(b) relief requested
6 by the committee.

7 So just to sum it all up, Your Honor. We would
8 propose to file a motion for summary judgment in early January.
9 We could agree to a schedule. Obviously before argument is
10 made, Your Honor will have an opportunity, together with the
11 parties, to determine, based on the papers filed, whether or
12 not there are any legitimate, genuine issues of fact that need
13 to be pursued or tried for which discovery may possibly be
14 warranted. And so even if we don't eliminate all claims and
15 all discovery, I think we will certainly narrow the field
16 substantially. It will also reduce the time necessary for
17 discovery, if that's the way it goes. And it will also
18 substantially reduce the cost and expense of litigating and
19 potentially resolving this matter. Thank you.

20 THE COURT: All right. I don't see Mr. Golden or Mr.
21 Dublin.

22 MR. O'DONNELL: Your Honor, may it please the Court.
23 Sean O'Donnell.

24 THE COURT: McDonald?

25 MR. O'DONNELL: O'Donnell.

1 THE COURT: O'Donnell.

2 MR. O'DONNELL: Mr. Golden and Mr. Dublin are in
3 Delaware on another matter and apologize for not being here
4 today.

5 THE COURT: I see your name on the submission.

6 MR. O'DONNELL: Yes, Your Honor.

7 THE COURT: All right, Mr. O'Donnell.

8 MR. O'DONNELL: Your Honor, for the record, Sean
9 O'Donnell with Akin Gump on behalf of Green Hunt Wedlake
10 Incorporated, Trustee of General Motors Nova Scotia Finance
11 Company. We join in the suggestion by the noteholders that, in
12 fact, most if not all of the claims could be disposed of by
13 summary judgment.

14 If you were to look at essentially the five claims
15 for relief that the committee's seeking, they all can either be
16 dealt with as a matter of law or by certain undisputed facts
17 that are either in public filings or in their very own papers.
18 The duplicative claim, for example, is an issue of law that can
19 be dealt with by summary judgment, and the remainder of the
20 claims, the avoidance claims, go towards -- the lynchpin of the
21 claim is an objection to the lockup agreement and the consent
22 fee. And as mentioned a moment ago by counsel for the
23 noteholders, on June 1, 2009 there was an 8-K that was filed by
24 the debtors. That 8-K expressly, not only identifies the
25 lockup agreement but goes through and describes the very terms

1 that the committee is objecting to now.

2 THE COURT: Mr. O'Donnell, as I understand the
3 exchange of papers, or at least the committee's position,
4 they're not saying that this was done in the dead of night;
5 they're saying that this was a bad transaction that would be no
6 less bad if it were done in Macy's window, which it seemingly
7 was. Both you and Mr. Zirinsky had talked about the disclosure
8 of it. But as I understand the gist of the creditors'
9 committee's position, as to which I express no substantive
10 view, but I hear when people talk to me, they're saying that in
11 substance it was an avoidable transaction and/or one that
12 justifies equitable subordination.

13 MR. O'DONNELL: The problem with that position, Your
14 Honor, is they didn't say that at the sale hearing. They
15 didn't say it -- in fact not only did they not object, they
16 consented and supported the transfer of any claim relating to
17 the consent fee by GM Canada to New GM. It's no longer an
18 asset of the estate. It's not something that the committee can
19 complain of after approving the sale. So there's no dispute as
20 to the disclosure and a month later they say this is fine, you
21 can sell these claims to New GM. It's part of what New GM
22 bought. It's why, if you were to grant the relief that they're
23 seeking, you'd have to essentially unwind that 363 sale, which
24 I don't think anybody wants.

25 Now, Your Honor, at a minimum, what I would suggest

1 is allow the parties to move on an expedited basis, summary
2 judgment briefing. We can -- in the meantime, document
3 requests can go out the door, but we're prepared to move for
4 summary judgment within another week or two. The other side is
5 free to argue that it's premature or that there are facts that
6 will raise tryable issues. We don't think that's the case,
7 Your Honor. And we're pretty sure that we can convince you of
8 that with our papers. Thank you.

9 THE COURT: I'll hear from New GM, at least until I
10 can ascertain its standing.

11 MR. STEINBERG: Good afternoon, Your Honor. Arthur
12 Steinberg from King & Spalding on behalf of New GM. There's a
13 part of me that wants to agree with you and then sit down. And
14 I would, because this is really an objection to claims filed by
15 an estate representative against claimants who have filed large
16 claims in the case. So under normal circumstances, what would
17 a purchaser of the assets have to weigh in on the subject, and
18 why would, in effect, New GM want to weigh in something where
19 the plaintiff is the creditors' committee? And so, to that
20 extent, Your Honor, I was almost happy to sit maybe even
21 further --

22 THE COURT: Yes, I kind of thought that New GM had an
23 interest in the welfare of the creditors of Old GM.

24 MR. STEINBERG: That's correct, Your Honor. And on
25 the same token, the creditors of Old GM have an interest in the

1 welfare of New GM. And it is because of that reason that I
2 stand here today, why we filed a fairly substantial response,
3 and why I believe there are five separate reasons why we have
4 to weigh in on this matter and why I actually support the
5 suggestions made by that side of the table that so much of this
6 can be resolved without five months of discovery with lots of
7 depositions, because some of the issues are very specific, very
8 concrete, and can be decided on the papers. But I'd like to go
9 through what Your Honor's threshold issue is, which is why New
10 GM is weighing in on this controversy, and go through the five
11 factors.

12 The first, as articulated by Mr. Zirinsky, was that
13 there's a Rule 60(b) request to vacate the sale order. We're
14 the purchaser under the sale order. We had a final and
15 nonappealable order. The ramifications of any kind of Rule
16 60(b) relief, given to the committee or anyone else, has major
17 ramifications to New GM. So on that basis alone, New GM would
18 be appearing.

19 And by the way, if I can just digress off the five
20 points? Because I think that whole 60(b) relief is a tempest
21 in a teapot. And the fact that no one really wants to say what
22 it is, except for what I'm about to say now, I think it's
23 important for Your Honor to hear. They filed a 60(b) relief.
24 The other side files fifteen pages of briefing in response to
25 it. The committee doesn't really articulate what their 60(b)

1 request is, other than to say it's protective, which is a very
2 unusual way of articulating what it is.

3 What I think that's really behind here, just so that
4 Your Honor has the issue on the table, without trying to
5 articulate it, is that when New GM designated the lockup
6 agreement as an executory contract to be assigned to it, it did
7 so because it believed that there was a cooperation covenant in
8 the agreement that if either Old GM hadn't complied with, it
9 could potentially unravel the lockup agreement and particularly
10 have an impact on GM Canada. So they asked for the assignment
11 in order to make sure that that cooperation covenant was going
12 to be complied with.

13 The noteholders have articulated that the assumption
14 and the assignment of that lockup agreement constituted the
15 allowance of the noteholders' claims and the Nova Scotia
16 trustee claim, for all purposes. We've stated in our papers
17 that that was not our belief that that was the intent or what
18 actually happened by virtue of the assignment, because the
19 actual lockup agreement says that Old GM would acknowledge the
20 claims and agree to support the claims to the fullest extent
21 permitted by law. And that when that document -- when that
22 lockup then gets assigned to New GM, that's all that happened,
23 is that New GM will advocate and support their position to the
24 fullest extent permitted by law. We believe that preserved the
25 right for the committee to raise the objection and do what they

1 are trying to do now.

2 We also believe that the noteholders' position is the
3 correct position, but the issue was still for Your Honor to
4 determine, and no one was trying to, in effect, have claims
5 allowed of a billion dollars, by virtue of designating it in a
6 long list of executory contracts after the sale order.

7 I think all of the Rule 60(b) issue is whether there
8 was a greater ramification for the assumption and assignment
9 order other than what I've just said, which is that we wanted
10 to take on the cooperation covenant, but it wasn't a deemed
11 allowance for purposes of the bankruptcy case.

12 If that is litigated, because the noteholders will
13 want to articulate their position, the committee will take
14 whatever their position is, I've already articulated what New
15 GM's position is -- and Mr. Karotkin is in court, I bet you he
16 will agree with me on what Old GM's position is, because we've
17 talked about it before -- then Your Honor could have that issue
18 teed up without discovery. Because there's nothing, really, I
19 think, more behind the Rule 60(b) relief. And then one
20 material issue that's involved in this case from New GM's
21 perspective, would go away. And a very big issue from a public
22 perception, that the committee is trying to undo a portion of
23 the sale order for protective basis.

24 And you couldn't -- if Your Honor didn't see the
25 issue without me articulating it, it's because the committee

1 never articulated what their real reason was. And they framed
2 -- they didn't say what part of Rule 60(b) that they were
3 moving under. And they came up with the notion, which I've
4 never heard of before, is I'm moving on a protective basis.

5 THE COURT: Pause, please, Mr. Steinberg. If you
6 could agree in paper by a stip or consent order or something
7 like that with the creditors' committee in this case and with
8 debtors' counsel, Mr. Karotkin or his designee, to confirm and
9 memorialize your understanding of the limited significance of
10 the assignment, then I need your help on a related standing
11 issue. What standing do other individual parties in the case,
12 most obviously bondholders, have to quarrel with the
13 confirmatory understanding between the two sides of the assume
14 and assign relationship?

15 MR. STEINBERG: Your Honor, if they wanted to argue
16 that it had a greater ramification, I think they should be free
17 to argue that, if they seriously want to argue that. All I can
18 articulate was why New GM designated the assignment as part of
19 the list of executory contracts and what it was trying to
20 accomplish and what it was not trying to accomplish. And I
21 think it's that concern of the deemed allowance of these claims
22 which underlies the Rule 60, and I think you don't need
23 discovery on that issue.

24 You can easily have the parties -- or Your Honor
25 could decide that issue. We can stipulate as to what New GM's

1 intention was. Old GM could stipulate what its intention was.
2 And then the issue is teed up. And if I'm correct, the Rule
3 60(b) relief of this entire motion goes away.

4 Now, I'll go through my entire presentation, but the
5 committee counsel can say whether I'm correct as to what that
6 basis of the 60(b) relief --

7 THE COURT: Well, it wouldn't be fair to any lawyer
8 in the country to make him respond on his feet to that. But
9 obviously some of the questions that I ask are intended to
10 provide food for thought for lawyers in the days that follow a
11 hearing.

12 MR. STEINBERG: Okay. The second reason why, Your
13 Honor, as to why we have -- why we are trying to weigh in on
14 this matter, is that we -- our reading of the lockup agreement
15 is that if there is a disgorgement, if there's a requirement to
16 repay the consent fee, that that would have ramifications to
17 the intercompany claims that have been released, and would have
18 real ramifications to GM Canada. And therefore, in order to
19 protect an asset that we purchased, we believe we have to weigh
20 in.

21 And that dovetails to the third point, which is that
22 in the sale order itself, we protected ourselves so that the
23 committee couldn't do what they're trying to do, because we
24 bought the avoidance power claims between the estates. That
25 was part of the list of assets that went over. It was not

1 based on the lockup agreement, it was based on the sale order.
2 And therefore, the ability to get a disgorgement of the consent
3 fee, which has ramifications on GM Canada, is something that we
4 made sure would not happen by virtue of the terms of the sale
5 agreement.

6 And so the third point is that they are looking to
7 build a case based on assets which are not part of this estate.
8 Voiding power claims were sold. Accounts receivable -- so the
9 intercompany claim between GM and GM Canada -- were sold to New
10 GM. In fact, cash above 950 million dollars was all swept by
11 New GM. So if there was more cash in this estate, that would
12 have been swept to New GM as well too. They are trying to, in
13 effect, to pick a provision of the sale order -- forget the
14 lockup agreement -- that they say, you know what, that's a
15 benefit that was there that I'd like to have back.

16 The fourth element, Your Honor --

17 THE COURT: Well, is the creditors' committee's
18 position -- and maybe Mr. Fisher is the better guy to ask than
19 you -- but is the creditors' committee's position that they
20 want to recover 360,000 dollars worth of -- 360 million dollars
21 worth of cash, or rather simply that they want to get -- have
22 the estate get credit for the 360 million dollars that was laid
23 out as part of that consent fee?

24 MR. FISHER: It's the latter, Your Honor.

25 THE COURT: Yeah.

1 MR. STEINBERG: It may be the latter, but I think
2 they wrote --

3 THE COURT: Go on, Mr. Steinberg.

4 MR. STEINBERG: -- okay. It may be the latter now,
5 but I think their papers actually have the former.

6 Your Honor, the next thing -- and by the way, that's
7 why I think a motion practice would narrow the gap here. But
8 if their ability is based on avoiding power claims, then we
9 weighed in because we wanted to make sure that everybody
10 understood that we bought avoiding power claims which dealt
11 with transfers from Old GM to its subsidiaries.

12 The fourth thing, Your Honor, is that they have
13 talked about the swap liability claim, which is a claim that is
14 asserted by New GM against the Nova Scotia trustee, which is
15 part of their claim. And in the context of objecting to their
16 claim, they have used language like "nefarious conduct" and
17 stuff like that. So to the extent that the conduct of New GM
18 was being weighed in on, we thought we needed to respond. To
19 the extent that they're talking about --

20 THE COURT: Well, wait, Mr. Steinberg. At the time
21 that all of this went on, I didn't think there was a New GM.

22 MR. STEINBERG: There wasn't. But they just picked
23 us because --

24 THE COURT: Well, I --

25 MR. STEINBERG: -- but they wrote it --

1 THE COURT: -- does protecting you against
2 accusations of nefarious conduct require any more than me
3 saying, I understand that there wasn't a New GM when this went
4 on?

5 MR. STEINBERG: Well, that's fair, Your Honor, and I
6 appreciate that. It's just that until you said it, all I had
7 was a naked allegation by a committee that didn't want to
8 attack its own estate, because they were the representative of
9 the estate. So I figured I had to say something. And I
10 appreciate Your Honor's remark.

11 But counsel misstated that the lockup agreement is
12 where the swap liability claim was transferred. The swap
13 liability claim was transferred as part of the sale order. It
14 is another asset that is embedded in the sale order. So a good
15 portion of the underpinnings of the committee's objection is
16 based on assets that were sold pursuant to the sale order,
17 totally without regard to the lockup agreement.

18 And therefore, I believe that since I'm firmly
19 convinced that I'm right on these issues, that we might as well
20 have motion practice to confirm that I'm right and see what's
21 left of their complaint, and how they want to articulate their
22 complaint, based on what the provisions of the sale order are.

23 And, Your Honor, just two -- one other thing. Your
24 Honor had said that they're not articulating that in the dead
25 of the night the lockup agreement was; that it was open and

1 notorious and you should be able to evaluate the claim. In
2 counsel's opening presentation to Your Honor he said that we
3 tried to -- someone, I don't know who -- tried to keep the
4 lockup agreement away from the Court's scrutiny. So there was
5 the element, in even the presentation heard this morning, that
6 there was an element that this was hidden from somebody.

7 And that's why you've got me saying what I did in our
8 papers, and why the noteholders went through a long list of
9 disclosures that were made with regard to this lockup
10 agreement. And these disclosures were things that the
11 committee knew. At the bottom line, at the end of the day,
12 from New GM's perspective, we would love to exit the case, love
13 this to be a strip-down objection between the committee and the
14 noteholders and the Nova Scotia trustee as to whether these
15 claims should be allowed or not allowed. If we are a fact
16 witness in connection with the lockup agreement, then we will
17 have to bear the consequences. It's probably the Old GM people
18 who would be the fact witnesses. But we stand and rise
19 because, A) --

20 THE COURT: Well, the Old GM people are for the most
21 part New GM people, aren't they?

22 MR. STEINBERG: That's correct, Your Honor. And
23 that's why I'm able to make the statements I made as to what
24 was intended, is because I spoke to the people who are in New
25 GM who were involved in the transaction for Old GM.

1 But until Rule 60(b) relief goes away, until I'm sure
2 that GM Canada is not going to be impacted by this proceeding
3 by virtue of anybody arguing that there's a damage to the
4 lockup agreement, until I can confirm that no one is trying to
5 use assets that we purchased as part of the sale agreement as a
6 basis for any type of claims, then I feel I was compelled, at
7 least in the first instance, to raise those issues and point
8 them out to Your Honor. Thank you.

9 THE COURT: All right. Mr. Fisher, would you like to
10 reply? Well, before you do, Mr. Fisher, Mr. Karotkin, I assume
11 you have no dog in this fight right now?

12 MR. KAROTKIN: That's correct, Your Honor. We view
13 this as an intercreditor dispute. And consistent with what you
14 said earlier, our interest is in getting this resolved
15 expeditiously and economically.

16 THE COURT: All right. Mr. Fisher?

17 MR. FISHER: Your Honor, I certainly won't address
18 all the arguments on the merits. But I did not mean to leave
19 out from my opening remarks a discussion of 60(b). Because I
20 recognize that that request for relief has been something of a
21 lightning rod, and we certainly did not intend it to be that.
22 And in fact, that's why we used this peculiar word
23 "protective". So I want to explain what it is that we mean
24 with respect to our 60(b) relief and how I think the best way
25 to approach that particular request is.

1 We've learned that the lockup agreement was assumed
2 by Old GM and assigned to New GM. And we see now from the
3 papers that were filed on Monday what we expected to see, which
4 is that at least some of the parties are arguing that the
5 assumption of the lockup agreement by Old GM means that there
6 was a judicial finding that the lockup agreement was a
7 reasonable exercise of the debtors' business judgment.

8 They're trying to use the assumption itself to
9 bootstrap arguments on the merits and to argue that the lockup
10 agreement in its entirety is insulated from review. And so to
11 the extent that the sale order and the assumption order can be
12 construed to be a judicial finding to that effect, we might
13 need relief from such an order. I don't think we will, because
14 I'm hopeful that Your Honor will -- again, I think that this is
15 factual as well -- but I think that once it's established that
16 despite what the 8-K said, because the disclosure actually was
17 not as complete as counsel would suggest, the creditors'
18 committee did not know when and whether this contract was being
19 assumed and assigned, and it could not have appreciated what
20 the full consequences of that assumption and assignment were.

21 And so it's possible -- one way to have gone would
22 have been to seek 60(b) relief from every aspect of the sale
23 order that we thought we needed to in order to preserve maximum
24 flexibility to challenge the lockup agreement and then press
25 forward with that motion. But I think that that would have

1 been a very aggressive and unsettling approach. And I think
2 that as discovery progresses it's quite possible that we can
3 narrow the extent to which we need 60(b) relief, if at all;
4 which is yet another reason why, as opposed to the suggestion
5 of New GM, I think the better approach is to let everyone learn
6 what the real facts are here before we come to this Court and
7 ask for rulings. Because if our hand is forced, we end up
8 having to ask for rulings that are more definitive and perhaps
9 broader than would be necessary if discovery were permitted.

10 And when I say that the 8-K -- first, I think Your
11 Honor is correct that even if -- that it's our position that
12 even if this agreement had happened in the Macy's department
13 store window, it would still be inequitable. But it's also the
14 case that we are complaining about the lack of sunshine and
15 that there was not sufficient disclosure about what the true
16 implications of this agreement were and who it benefited and
17 why it benefitted them.

18 So we need discovery with respect to all of that.
19 You heard New GM's counsel say that the only reason that the
20 lockup agreement was assumed was because they wanted to make
21 sure that Old GM couldn't take pot shots at the lockup
22 agreement. That's the -- the euphemism is the cooperation
23 covenant. But in substance, that's what it means. And I guess
24 it means that that was the only remaining portion of this
25 contract that required performance on the part of Old GM. And

1 it's Old GM's requirement to keep its sock in its mouth that
2 makes this contract executory and even capable of being
3 assumed.

4 But if that's the meaning of assumption, if the only
5 meaning is that Mr. Karotkin and Weil Gotshal is not allowed to
6 say anything bad about the lockup agreement, I think we can
7 live with that. But that's not what they're going to argue the
8 only meaning is. They're going to argue that the meaning of
9 the assumption is that this was a reasonable exercise of Old
10 GM's business judgment. And we certainly can't accept that
11 there's already been a judicial finding as to that, since the
12 creditors' committee and Your Honor was never apprised of what
13 the consequences of this assumption and assignment were.

14 On the topic of delay, I'll simply point out again,
15 we served discovery requests in August. If we had just been
16 engaged in discovery during this period of time, I think we
17 would be quite far along. And we're only now hearing that in
18 two weeks, claimants are prepared to make summary judgment
19 motions. And as I pointed out at the outset, I think that the
20 proposal by claimant's counsel is actually not going to achieve
21 the objective that they seem to want, which is the more
22 expeditious resolution of this case.

23 Your Honor is also correct that the distributions
24 that are being held up are not distributions to all creditors,
25 it's only distributions to GM Nova Scotia Finance bondholders.

1 And there's a reserve that's been established to ensure that if
2 we're wrong, no one is prejudiced by whatever delay is
3 occasioned by the full and fair litigation of this objection.

4 THE COURT: All right. Everybody sit in place.

5 (Pause)

6 THE COURT: All right, ladies and gentlemen. The
7 notion that I would allow summary judgment motions before
8 giving the creditors' committee a fair opportunity for
9 discovery is unthinkable. And I'm not going to permit summary
10 judgment motions under those circumstances without determining
11 the extent, if any, to which I would permit them thereafter.

12 It's unthinkable under Rule 56(f) of the Federal
13 Rules. It's unthinkable as a matter of basic fairness to the
14 creditors in this case -- the nonbondholder creditors in this
15 case. I wouldn't do it in a baby 11 and I'm sure not going to
16 do it in an 11 of this size, where there are thousands of
17 nonbondholder creditors who have a legitimate interest in the
18 fair prosecution of this litigation.

19 At the risk of stating the obvious, I express no view
20 as to the ultimate merits of the creditors' committee's
21 position on these issues. But these are, as the exchange of
22 briefs on both sides makes clear, serious claims, factually
23 complicated claims, which deserve and indeed require judicial
24 scrutiny, as to the facts as well as the law underlying the
25 claims that the creditors' committee wishes to pursue, and not

1 in a factual vacuum, or under which I or any higher court would
2 be required to analyze them with knowledge of less than all of
3 their relevant facts.

4 I am painfully aware, as my earlier remarks
5 telegraphed pretty clearly, of the reality that intercreditor
6 disputes are very expensive. Nevertheless, there are some
7 intercreditor issues that can't be swept under the rug and
8 ignored or be given expedited shorthand attention. As much as
9 I have probably articulated by words or body language my
10 frustration with the disputes between the asbestos claims
11 creditors' committee and the general creditors' committee, I
12 would not have suggested and I don't suggest to this day that
13 those parties are entitled to a judicial determination of their
14 respective rights. And I feel no differently with respect to
15 this issue.

16 So we're going to do it by the book, folks. We're
17 going to do it by the way that this court -- and by this court,
18 I mean not me alone but the judges in the United States
19 Bankruptcy Court for the Southern District of New York -- have
20 done by our local court rules which is summary judgment motions
21 may be made after a pre-motion conference under which the Court
22 can consider whether or not the green light for filing such a
23 motion should be given. But that pre-motion conference will be
24 taken after most or all of the discovery has been taken, not
25 now, and certainly not today.

1 I express no view as to whether or not I would later
2 grant or deny or, as I so often do, grant but with a message "I
3 think you're wasting your time", if such a request were made
4 down the road. Just as it would be irresponsible for me to do
5 anything else at this point in time, it would be irresponsible
6 for me to make a prediction with respect to that issue at this
7 point in time. So I'm not going to do it.

8 Now, with that said, I do believe that the discovery
9 has to be handled in a sensible way. First, I don't remember
10 how often I've had to address this since the request is made
11 increasingly rarely, but I hate interrogatories, except on the
12 most basic statistical and numeric information. Or, like we
13 used to do under the old MDL rules, before Rule 26 was amended,
14 interrogatories can be used to identify the names and locations
15 of witnesses. But I don't want them used for anything other
16 than that.

17 Document production is authorized. And lay witness
18 deposition testimony will be authorized. But you've got to
19 come back to me for permission to use interrogatories. And the
20 presumption is going to be that there are other and better ways
21 of getting information of that character.

22 Whenever you're talking about discovery of
23 governmental witnesses -- and I assume for the purposes of this
24 discussion that I should treat the Canadian government with the
25 same respect that I would treat our own -- you tend to involve

1 more complicated issues of internal deliberations, deliberative
2 privilege. I haven't dealt with these issues in years. I'm
3 not sure if I have my arms around them other than recognizing
4 that they exist. But that's going to have to be done with the
5 consent of the government; or if there is an agreement to
6 disagree, you're going to have to give me an opportunity to
7 understand what kinds of discovery of the government are
8 appropriate and what are not.

9 At least seemingly, if the government discusses
10 things with outsiders, like bondholders or their lawyers, that
11 well might not be privileged or subject to the protections
12 which we, as citizens and judges, accord to the federal
13 government and its personnel. But you've got to be careful in
14 that area. And I'll be available if you have to agree to
15 disagree.

16 You are to do your discovery quickly, cleanly; and
17 I'll be available, as I always am, in the event of discovery
18 disputes, after the usual meet-and-confers. But I need you to
19 redouble your efforts to make sure that the discovery is
20 efficiently handled, cooperative and clean.

21 You are to prepare a stip or consent order embodying
22 the request for discovery. As is apparent, discovery is
23 presumptively a two-way street. I recognize that the
24 creditors' committee is likely to have less in the way of
25 information that's relevant than maybe other parties, but it is

1 not, just because it's the creditors' committee, exempt from
2 discovery. And after you have some kind of stipulation or
3 consent order with as much as you can paper, you're to submit
4 it to me for judicial approval. If it's reasonable, that
5 judicial approval will be granted.

6 All right. Not by way of reargument, do we have open
7 issues? All right. Hearing none -- am I correct, Mr.
8 Karotkin, we have no further business as well?

9 MR. KAROTKIN: That's correct, Your Honor. Thank
10 you.

11 THE COURT: All right. We're adjourned.

12 (Whereupon these proceedings were concluded at 3:26 p.m.)
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I N D E X

R U L I N G S

DESCRIPTION

PAGE

LINE

Motion of IUE-CWA to approve assignment of

16

6

claim of IUE-CWA to a VEBA trust granted

Caplin & Drysdale's fee application generally

approved based on specific rulings made on the

record re:

objection of fee examiner re billing rates and

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6

task allocation sustained;

cost of Caplin & Drysdale's responding to fee

18

19

examiner's criticism will not be compensable;

objection of fee examiner re vague

19

1

communications and repetitive tasks sustained;

Overall objection of fee examiner in LFR fee

25

2

application that TEA, Inc. was not retained

overruled

Summary judgment motions will only be made

56

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after a pre-motion hearing and after

substantially all discovery, as outlined

on the record

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I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Parties directed to prepare stipulation or consent order re discovery requests for judicial approval	58	21

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
DN: cn=Lisa Bar-Leib, o, ou,
email=digital1@veritext.com,
c=US
Date: 2010.12.16 12:08:47 -05'00'

LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET**D-486)

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: December 16, 2010